

U.S. v. Perez-Lopez
No. 03-57051

JUN 06 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

RAWLINSON, Circuit Judge, dissenting:

I respectfully dissent. Although I do not disagree with my colleagues regarding how the standing issue should be analyzed in the context of a forfeiture case generally, I disagree with the application of that analysis to the district court's decision in this case.

As the majority disposition acknowledges, a conclusion that Claimants lack standing "is simply another way of stating that Claimants had failed to establish on the merits a property interest entitling them to relief." *United States v. Hooper*, 229 F.3d 818, 820 n.4 (9th Cir. 2000) (citations omitted). Although the district court inartfully referenced Article III in resolving the question of Claimants' "standing," review of the court's analysis reveals that it ultimately concluded that the Claimants "failed to establish *on the merits* a property interest *entitling them to relief*." *Hooper*, 229 F.3d at 820 n.4 (emphasis added). The district court conducted a trial and considered the evidence of ownership and possessory interest presented by Claimants' counsel.

I agree with the majority that Claimants met the Article III requirement for contesting the forfeiture. However, I am also of the opinion that Claimants were

given the opportunity to contest the forfeiture on the merits. Of particular interest is the conclusion by the court that the currency be forfeited, rather than a conclusion that the Claimants were not entitled to advance their claims, as would be the case if Article III standing were lacking. *See Envtl. Def. Ctr., Inc. v. United States Envtl. Prot. Agency*, 344 F.3d 832, 863 (9th Cir. 2003) (denying a party the opportunity to participate in the proceedings where it lacked standing). Because the district court permitted the Claimants to contest the forfeiture on the merits, I would affirm.